

1 Richard & Mary Hartzell
2 4299 NE 29th St
3 Redmond OR 97756
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FILED '10 AUG 24 16:30 USDC-ORE

5 UNITED STATES DISTRICT COURT
6 DISTRICT OF OREGON

Richard & Mary Hartzell

Plaintiff,

vs.

U.S. Bank, NA

Defendant

Case # 6:10-CV-6231-HO

RESPONSE TO RULE 12 MOTION

7
8 Date: 08/24/2010

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10 (1) The Plaintiff, in her Original Petition, plead that Defendant charged false fees as
11 stipulated to Plaintiff as listed on the HUD 1 Settlement Statement, included as Exhibit 1.
12 Plaintiff specifically plead that Defendant, at the time of settlement of the contract,
13 Defendant failed to provide documentation to establish that said fees were not included in
14 those fees expressly addressed by the Real Estate Settlement Procedures Act as forbidden
15 to be charged to Plaintiff at settlement.


16 (2) Plaintiff further alleged that Defendant, acting in concert and collusion with the loan
17 broker, toward the perpetration of a carefully contrived connivance, provided the
18 amounts listed in the HUD 1 Settlement Statement, to the loan broker as an undisclosed
19 yield spread premium. Said undisclosed yield spread premium is alleged to be in
20 addition to the one percent loan origination fee, charged to Plaintiff, as allowed by law.
21 Plaintiff alleged that said payment to the broker of undisclosed yield spread premium was
22 a predicate act intended to improperly influence loan broker to misrepresent facts to
23 Plaintiff, to give partial disclosure of those facts which would appear favorable to the
24 intent of the loan broker, while failing to give full disclosure of other facts that would not
25 seem favorable to the contract.

26 (3) By the above, Plaintiff stated a claim for which recovery could be had, and therefore,
27 Defendant's motion to dismiss is frivolous. Plaintiff moves the court to deny Defendant's

pleading, or, in the alternative, treat Defendant's pleading as a request for more definite statement, in which case, Plaintiff will provide a more definite statement as requested.

(4) Further, Plaintiff moves the court to order sanctions against Defendant for filing a frivolous pleading and for failing to speak with candor to the court as Defendant is totally inept or acted with deliberate intent to improperly influence the court with false pleadings.

Respectfully Submitted,


Richard Hartzell


Mary Hartzell

VERIFICATION

We, Richard & Mary Hartzell , do swear and affirm that all statements made herein are true and accurate, in all respects, to the best of our knowledge.

Richard & Mary Hartzell
4299 NE 29th St
Redmond OR 97756

SWORN TO AND SUBSCRIBED BEFORE ME, Barbara R. Fehl, by Richard and Mary Hartzell, on the 24th day of August, 2010, which witnesses my hand and seal of office.

Barbara R. Fehl

NOTARY PUBLIC IN AND FOR
THE STATE OF OREGON



